

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA,

v.

METROPOLITAN DISTRICT COMMISSION, et al.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION
OF NEW ENGLAND, INC.

v.

METROPOLITAN DISTRICT COMMISSION

SCHEDULE SEVEN
COMPLIANCE ORDER NUMBER 233

October 8, 2014

STEARNS, D.J.

This is the two hundred and thirty-third Compliance Order that has issued in this litigation. On September 15, 2014, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report. The United States and the Conservation Law Foundation have declined to file a response.

I. Schedule Seven

A. Activities Completed

1. Interceptor Connection Relief and Floatables Control at Outfall SOM01A

As noted in previous compliance reports and orders, the MWRA achieved substantial completion of this project in December of 2013, well ahead of the June 2014 milestone set out in Schedule Seven.

2. Control Gate and Floatables Control at Outfall MWROO3 and Rindge Avenue Siphon Relief

The MWRA reports that on August 28, 2014, in compliance with Schedule Seven, it issued the Notice to Proceed with this \$2.67 million project, which is the last of the six construction projects in the MWRA's long-term Combined Sewer Overflow (CSO) control plan for the Alewife Brook. As explained in previous compliance reports and orders, the MWR003 project will upgrade the overflow hydraulic capacity at Outfall MWR003 and increase capacity at the Rindge Avenue siphon, which delivers overflows to Outfall MWR003. By replacing the existing 30-inch siphon with a 48-inch siphon and the static overflow weir with an automated gate that will drop when the metered flow approaches critical levels, the MWR003 project will provide system relief and control of upstream flooding during extreme weather events. The resulting increase in overflow capacity

will compensate for the planned closing of Outfall CAMO04, to be implemented on completion of the CAM004 sewer separation project in December of 2015.

The MWRA reports that it has agreed to the City of Cambridge's request to install a flap gate to prevent backflow upstream of the MWR003 project. The gate will be housed in a 48-inch interceptor dedicated to service areas of Cambridge.

B. Progress Report

1. Combined Sewer Overflow Program

a. CSO Project Awards

The MWRA reports that the City of Cambridge and the Town of Brookline have both received accolades for recent projects in the MWRA's long-term CSO control plan. The American Public Works Association (APWA) named Cambridge's Alewife Constructed Wetland a 2014 Environment Project of the Year. In addition, the wetland was recognized as Best Water/Environment Project in Engineering News Record (ENR)/New England's 2014 Best Projects Competition. It also received a National Recognition Award from the American Council of Engineering Companies (ACEC), as well as a

Gold Award in the ACEC Massachusetts 2014 Engineering Excellence Awards Competition.

Brookline's sewer separation project, completed in 2013, was also named a 2014 Environment Project of the Year by APWA, and received a Silver Award for Engineering Excellence from ACEC/Massachusetts and a 2014 Merit Award from ENR/New England.

b. CAM004 Sewer Separation

The MWRA reports that the City of Cambridge continues to make substantial progress on the CAM004 sewer separation project. Surface restoration work will continue through December of 2015 on the now substantially completed \$17.7 million Contract 8A, which involved the installation of sanitary sewer and storm drain pipe in the Huron Avenue/Fresh Pond/Brattle Street vicinity.

The MWRA also reports that Contract 8B, which involves the separation of combined sewers in an 83-acre area between Concord Avenue and Brattle Street, is now some 25 percent complete (as compared to 20 percent last quarter). According to the MWRA, scheduling issues have arisen, primarily as a result of winter weather delays, in the relocation of gas lines. The MWRA has authorized the

City of Cambridge to undertake change order and amendment negotiations with its contractor and engineering consultant in order to implement a recovery schedule that will enable the parties to achieve completion of the CSO-related work in compliance with Schedule Seven. Under the proposed recovery schedule, the contractor will concentrate on sewer and drain installations, and postpone surface restoration work. This will cost an estimated additional \$1.5 million (for temporary road and sidewalk paving, extended engineering services, and police details), but will also allow for the completion of the CSO-related work in Project 8B, a prerequisite to the commencement of the CSO-related work in Project 9, the last of the three projects that comprise the CAM004 sewer separation project.

The MWRA reports that Contract 9, which provides for the installation of new sanitary sewers and storm drains in Concord Avenue (and intersecting streets) to separate combined sewers in a 60-acre area from Fresh Pond Parkway to the intersection of Concord and Huron Avenues, is now 15 percent complete.¹ Provided that the Contract 8B recovery schedule remains on track, the MWRA expects

¹ At the close of the last quarter, the MWRA reported Contract 9 was 18 percent complete. The discrepancy is not explained.

that Contract 9 will be substantially complete by December of 2015, in accordance with Schedule Seven.

c. Concord Lane Delays

The MWRA reports that it was able to assist the City of Cambridge in securing a right of entry (ROE) onto the previously-discussed Concord Lane property, which runs behind the Fresh Pond Mall and serves adjacent commercial properties. Cambridge has since completed the necessary field, building and utility surveys, as well as the soil borings and groundwater testing. According to the MWRA, Cambridge recently completed the 60 percent design plans, and will meet with the property owner to review the plans and negotiate a final ROE for construction. This project is currently on track to meet Schedule Seven's milestone of December 2015.

d. Reserved Channel Sewer Separation

The MWRA reports that the Boston Water and Sewer Commission (BWSC) continues to make progress on the remaining contracts that comprise the Reserved Channel sewer separation project. The two remaining sewer separation contracts: Contract 3B (which involves sewer separation over a span of 66 acres, and is now approximately 93 percent complete) and Contract 4 (which involves

sewer separation over 182 acres, and is now approximately 80 percent complete), are progressing on schedule.

The MWRA additionally reports that the \$6.8 million Contract 8 (for pavement restoration following sewer separation-related construction) will continue to track the sewer separation work performed under Contracts 3B and 4, through April of 2016, and that Contract 5 (for the cleaning and lining of existing sewers) is expected to be substantially complete in November of 2015. With respect to Contract 6 (for downspout disconnections), the MWRA reports that BWSC has not issued the notice to proceed, but is currently evaluating whether the remaining work under Contract 6 should be subsumed under Contracts 3A and 4. According to the MWRA, all work for the Reserved Channel Sewer Separation project remains on track for completion by December of 2015, in compliance with Schedule Seven.

II. Comments

The court congratulates the City of Cambridge and the Town of Brookline on the well-deserved awards received from industry associations for the excellence of their CSO-related projects. The court is additionally pleased that the vexing Concord Lane issues have

been resolved, and that all remaining projects appear to be progressing on schedule.

ORDER

The parties are ordered to report to the court as previously scheduled.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE